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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/017,474 | 12/14/2001 | S. Scott Friderich | KCC-16,182 | 5217 |
| 35844 | 7590 | 12/15/2003 | | |
| PAULEY PETERSEN KINNE & ERICKSON 2800 WEST HIGGINS ROAD SUITE 365 HOFFMAN ESTATES, IL 60195 | | | EXAMINER REICHLE, KARIN M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3761 | |
| DATE MAILED: 12/15/2003 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/017,474

Applicant(s)

FRIDERICH ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 1-14, 16, 18, 21, 23 and 25-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15, 17, 19, 20, 22 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4, 41/2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of the Group II invention, the species of Figures 3-5 and the species of the material of claim 24 in Paper No. 8 is acknowledged.

2. Claims 1-14, 16, 18, 21, 23, and 25-27 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 8.

In addition to claims 27, 5-6, 8, 12-13, 18, 23 and 25, claims 1-4, 7, 9-11, 14, 16, 21 and 26 were withdrawn as they did not read on the structure shown in Figures 3-5 or the material of claim 24, e.g. claim 1 requires a modulus in the range of up to about 4.5 psi in a first axis of the flap whereas the material of claim 24 requires a modulus of only about 3 psi in the cross direction of the material.

Specification

Drawings

3. The drawings are objected to because in Figure 2, the lines from 22 and 36 should be dashed to denote underlying structure. This also applies to Figure 3. Additionally, elements 22 and 36 as well as any other underlying structure (and the lines therefrom), e.g. 4, 44, 46 and 48, should also be denoted by dashed lines in Figure 3. In Figure 4, the element 70 and the lines therefrom should be shown by dashed lines. In Figure 5, the lines from 64 and 65 should also be shown in phantom. This also applies to the line from 81 in Figure 6. With regard to Figure 7,

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see the discussion supra with regard to Figure 3. Also the side panels 20, 28, 20 and 18 should be 18, 20, 24 and 26, respectively. In Figures 8 and 10, the faces should either be 166 and 168 or 158 and 156 in both. In Figure 9, the lines from 150, 152 and 154 should be arrows and the line from 44 should be dashed.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Description

4. The disclosure is objected to because of the following informalities: in Figure 2, what is 16? In Figure 7, what are 55 and 57?

Appropriate correction is required.

5. The use of the trademark KRATON(R)(page 16) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Language Interpretation

6. The claim terminology "article", "attached", "bicomponent", "bonded", "elastomeric", "extensible", "containment flap", "longitudinal", "transverse", "CD", "necked" material", "substantially continuous fibers" are defined as set forth on pages 7-14.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 15, 17, 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Roe et al '866.

Claims 15 and 20: See Figure 1 and Figure 18, the article is 20, the chassis is 22, the flap is 30 or 1830 and includes elastomerics 54 for tensioning the flap in the longitudinal direction and the flap, i.e. panel 31 or 1831, is extensible in the transverse direction, see, e.g., col. 6, lines 1-20, col. 9, line 55-col. 10, line 32 (and thereby also Freeland et al '120 at col. 14, lines 27-49, col. 15, lines 62-col. 16, line 25), col. 30, line 31-col. 31, line 2. It is noted that the terminology "low modulus of elasticity" has not been given a specific definition and thereby is considered relative. The Roe et al device is considered to have a "low modulus of elasticity".

Claim 17: see col. 6, lines 1-20, col. 9, lines 41-43, col. 24, line 10-59 (Note also definition of nonwoven and spunbonded nonwoven in Materials Handbook, 13th edition).

Claim 19: see definition of "bonded" in the Claim Language Interpretation section supra.

9. Claims 15, 17, 19-20 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Serbiak et al '232.

Claims 15, 20 and 22: See Figure 1, col. 2, lines 17-41, col. 4, lines 50-65, col. 6, lines 4-10, col. 6, line 44-col. 7, line 10 et seq (and thereby Morman '992 at col. 5, line 57-col. 6, line

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21), col. 8, lines 31-41 and col. 12, lines 24-30, i.e. the article is 8, the chassis is 22, 24, and 26 where coextensive, the flap is adjacent 40 and includes elastomerics 40 for tensioning the flap in the longitudinal direction 18 and the flap is extensible in the transverse direction 20. It is noted that the terminology "low modulus of elasticity" has not been given a specific definition and thereby is considered relative. The Roe et al device is considered to have a "low modulus of elasticity".

Claim 17: see portions cited supra (Note also definition of nonwoven and spunbonded nonwoven in Materials Handbook, 13th edition).

Claim 19: see definition of "bonded" in the Claim Language Interpretation section supra.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Serbiak et al in view of Morman et al '045.

Applicants claim a flap comprised of necked spunbond material having a necked spunbond nonwoven material of substantially continuous bicomponent fibers being necked to about 45% of its original width, with a basis weight of about 0.4 osy, a Young's modulus in the CD of about 3 psi/% and a hydrohead of less than about 4 mbar. The Serbiak et al reference

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teaches a flap comprised of necked spunbond material, i.e. the topsheet, having a necked spunbond nonwoven material of substantially continuous fibers being necked to about 45% of its original width, with a basis weight of about 0.4 osy, extensibility in the cross direction and liquid permeability, see portions cited supra. Therefore, Serbiak et al includes all the claimed structure except for bicomponent fibers and the specific modulus and hydrohead. However, see Morman '045, at col. 9, line 32-col. 10, line 20, i.e. interchangeability of polyolefin fibers and bicomponent fibers to make neckable material. To make the necked polyolefin spunbond nonwoven material of Serbiak et al necked bicomponent spunbond nonwoven material instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Morman et al. Furthermore, the general conditions of the nonwoven material are disclosed by Serbiak et al, i.e. the topsheet material defining the flap includes extensibility in the cross direction and liquid permeability. Therefore to discover the optimum or workable extensibility in the cross direction and liquid permeability of such material for the flap of Serbiak et al, i.e. about 3 psi/% and 4 mbar, if the material does not already include such when tested according to the tests of the instant application, is not inventive, In re Allen et al, 105 USPQ 233. It is noted that the criticality of 3 psi/% or 4 mbar with respect to other extensibilities in the cross direction and liquid permeabilities of the material have not been set forth.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references not applied also teach materials having high extensibility, i.e. low Young's modulus, or the definition of liquid impermeability.

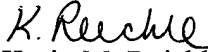
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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617.

The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR